

## General Conditions of Danske Havnevirksomheder 2007

### Section 1 General provisions

#### §1 Definitions

For the purposes of these General Conditions, the terms used shall have the following meanings:

*Orderer:* Orderer means any party having concluded an agreement with a Port Operator.

*Port Operator:* Port Operator means any undertaking which is a member of Danske Havnevirksomheder.

*Task:* Task means one or more tasks usually covered by stevedoring, including

- a) handling of goods in terminal
- b) loading and unloading of goods carried by sea, rail or road
- c) lashing and trimming
- d) transport on quays and in similar places
- e) sorting of goods
- f) storage, stock control and stock hotels, as well as any handling of goods related thereto
- g) packing and labelling in connection with storage

*Delivery:* Delivery means the time at which the Port Operator delivers the goods to the party entitled to take delivery, or the time at which the goods are placed at that party's disposal.

*SDR:* SDR means the special drawing rights applied by the International Monetary Fund.

SDR is converted into Danish kroner according to the rate on the day when security for the liability is provided or, in the absence of such security, on the day of payment.

*Written Notice:* Written Notice means any notice forwarded by regular mail, fax or e-mail.

#### §2 Scope

Unless otherwise expressly agreed, these General Conditions shall apply to any Task performed by a Port Operator.

### Section 2 Offer, price, payment and lien

#### §3 Offer

Any offer made by the Port Operator shall not be binding until the Orderer's accept of such offer has been received by the Port Operator.

#### §4 Price

The Orderer shall pay the price agreed by the parties. All prices shall be stated exclusive of VAT and any other dues and taxes.

*Subsection 2.* Unless the Port Operator receives special instructions from the Orderer concerning the nature and extent of the Task, the price of the Port Operator shall be based on

- a) usual handling of general goods packed in accordance with common practice
- b) performance of the Task in usual gang sizes using the gear normally

employed in the port in question and within normal working hours

- c) continuous execution of the Task without interruptions due to the weather, the structure of the means of transport or inadequate preparation.

*Subsection 3.* Any work exceeding the scope of work expressly agreed or the scope anticipated by the Port Operator at the time of quotation, cf. subsection 2, shall be considered additional work for which the Port Operator is entitled to separate payment. This also applies if the work of the Port Operator is hampered or delayed due to circumstances beyond its control.

*Subsection 4.* In cases where the parties have not agreed a price in advance and in cases subject to subsection 3, the Orderer shall pay the price charged by the Port Operator unless the Orderer proves that such price is unfair. Where the Orderer does not without delay object to the price charged by the Port Operator, such price shall be considered fair.

*Subsection 5.* Any documentation presented by the Port Operator concerning e.g. the equipment used, the period during which the work was performed and the number of employees participating in the execution of the Task shall be decisive in determining whether the Port Operator is entitled to payment under subsection 3, or whether the price charged is fair under subsection 4.

### **§5 Outlays**

The Port Operator shall be entitled to claim reimbursement of any documented outlay and outlay costs where such outlay exceeds the amount expressly agreed.

### **§6 Currency**

Unless otherwise agreed, all prices shall be stated in Danish kroner.

*Subsection 2.* Where the price is stated in a currency other than Danish kroner, the Orderer shall bear the risk of any fluctuation of the exchange rate between the Danish krone and the currency stated in the period from the date of quotation to the date of payment.

### **§7 Terms of payment**

Terms of payment for Tasks performed by the Port Operator shall be net cash on receipt of invoice.

*Subsection 2.* If payment under subsection 1 is not effected, the Port Operator may send a 7-day letter of demand to the Orderer. If no payment is received within the time stipulated in such letter, §18 shall apply.

*Subsection 3.* Interest on the Port Operator's claim is payable at the rate of 2% per month or fraction of a month from the due date.

### **§8 Security**

Irrespective of §7, the Port Operator may, when it has good reason to do so, demand payment in advance or demand that the Orderer provide such security as the Port Operator considers adequate for the its claim under any unpaid invoices, the performance of current Tasks or any other claim.

*Subsection 2.* Until the time of payment or provision of security, the Port Operator may, without prior notice and without incurring liability to pay compensation, discontinue current Tasks.

### **§9 Set-off**

The Orderer shall have no right of set-off whatsoever against the Port Operator's claim.

### **§10 Lien**

The Port Operator shall have a lien on goods, documents, cash etc. under the Port Operator's control for any costs related to the goods, including remuneration and warehouse

rent, as well as for any other claims of the Port Operator against the Orderer regardless of whether they pertain to other Tasks performed by the Port Operator for the Orderer.

*Subsection 2.* In the event of any loss of or damage to objects subject to the lien of the Port Operator under subsection 1, the Port Operator shall have a similar lien on any amount of compensation.

*Subsection 3.* If due claims of the Port Operator have not been paid within 14 days from the date of a letter of demand forwarded by the Port Operator under §7(2), the Port Operator may arrange for a proportion of the goods large enough to cover the claim of the Port Operator to be sold out of court in a safe way, by public auction or by offering it to relevant buyers. Where possible, the Port Operator shall give prior notice of such sale to the Orderer.

**Section 3**  
**Performance of the Task**

**§11 Information on the goods**

The Orderer shall give the Port Operator such instructions and information as are necessary for the performance of the Task. This includes providing information to the Port Operator in good time on:

- a) the nature, weight and volume of the goods
- b) any special precautions necessary for the performance of the Task
- c) stowage and/or discharge plans
- d) any other relevant facts, including information on any special precautions to be observed for the protection of individuals, the environment or the property of the Port Operator or any third party against damage caused by the goods.

*Subsection 2.* Where the Task comprises a stock hotel, warehousing or storage of goods for a short-term or long-term period, the Orderer shall also be responsible for providing the Port Operator with all relevant instructions pertaining to any special warehousing or storage conditions, including temperature, light and humidity conditions, required for the warehousing/storage of the goods in question.

*Subsection 3.* If the Port Operator stores the goods in a way that is customary in the port in question or in the industry in general, the Port Operator shall not incur liability for any damage due to circumstances which the Port Operator could not reasonably foresee or the consequences of which the Port Operator could not reasonably prevent unless the Port Operator has acted against the Orderer's express instructions.

*Subsection 4.* The instructions and information referred to in subsections 1 and 2 shall be given by separate Written Notice to the Port Operator. Information written on shipping notes etc. shall not be considered adequate.

*Subsection 5.* Where the Orderer does not meet his obligations under subsections 1 and 2, the Port Operator shall be entitled, without instructions and for the Orderer's account and risk, to take any precautions required to prevent damage to the goods, to individuals, to property or to the environment. If necessary, the Port Operator may thus have the goods removed, destroyed, rendered harmless or sold pursuant to the provisions of §10(3).

**§12 Dangerous goods**

If the Task includes dangerous goods, the Orderer warrants to the Port Operator that the Port Operator will receive in good time all relevant information pursuant to the conventions and any other rules and regulations on dangerous goods in force from

time to time. The Orderer warrants to the Port Operator that all dangerous goods have been packed, labelled, packaged and classified under the said conventions and rules. Furthermore, the Orderer warrants that the necessary regulatory permits have been obtained.

*Subsection 2.* The Orderer shall, in good time, inform the Port Operator of any other dangerous goods carried by the means of transport, indicating the nature and classification of such goods. This applies even if such dangerous goods are merely in transit. Furthermore, the Orderer shall make sure that the rules on dangerous goods applying to the port in question are complied with.

*Subsection 3.* §11(4-5) shall apply by analogy.

**§13 Handling of goods**

It shall rest with the Orderer to perform tallies or any other control functions in connection with the loading and unloading of goods and their entry to and dispatch from the warehouse.

*Subsection 2.* Unless otherwise agreed, the Orderer shall make sure that the goods are packed and labelled in accordance with the rules in force from time to time and so as to withstand normal handling as well as wind and weather.

**§14 Equipment**

The Port Operator shall provide the usual equipment for loading, stowage, securing, unloading etc.

*Subsection 2.* Irrespective of subsection 1, the Orderer shall ensure that the relevant means of transport makes available the equipment referred to in subsection 1 without any costs to the Port Operator provided that the Port Operator in reasonable time instructs the Orderer to do so. In that case, such

equipment shall meet all regulations in force as well as any specific requirements set out by the Port Operator prior to the execution of the Task. In addition, the Orderer shall ensure that the Port Operator is properly instructed in the use of the equipment and shall, in general, contribute to preventing personal injury or damage to the environment, to equipment and to goods.

**§15 Preparation of means of transport**

Unless otherwise agreed, the Orderer shall ensure that the relevant means of transport is prepared for the Port Operator's performance of the Task. This includes ensuring that the holds are clean, that access to the means of transport and its holds is adequate and safe and that the means of transport is ready in every respect to receive the goods.

*Subsection 2.* Furthermore, the Orderer shall ensure that the working conditions on board the means of transport, including ventilation, light, mooring and safety measures, are adequate and comply with the regulations.

*Subsection 3.* If in the opinion of the Port Operator the Orderer has not met his obligations under subsections 1 and 2, the Port Operator shall have the right, but not the duty, to perform the said tasks for the Orderer's account and risk. This also applies if the said tasks are usually performed by the Port Operator.

**§16 Insurance**

The Port Operator is under no obligation to insure the goods, including stored goods, whether for its own or the Orderer's account.

*Subsection 2.* The Orderer shall take out insurance against any injury to persons or damage to property caused by the goods. At the request of the Port Operator, the Orderer shall prove that such insurance has been taken out and is in effect.

### **§17 Termination**

The agreement between the Orderer and the Port Operator shall expire at the time stipulated in such agreement or upon completion of the Task. If the agreement is for an indefinite period of time, it shall be terminable by giving at least 30 days' notice to expire on the last day of any month.

*Subsection 2.* If the Orderer or any party entitled thereto has not received the goods after expiry of such notice, § 23(3-4) shall apply by analogy.

### **§18 Breach**

Irrespective of §17, the agreement between the Port Operator and the Orderer is terminable without notice upon material breach. Examples of material breach are:

- a) failure to pay within the time stipulated in the letter of demand under §7(2)
- b) missing, unclear or inadequate information in respect of dangerous goods
- c) suspension of payments, initiation of insolvency proceedings, opening of composition negotiations, filing of a winding-up petition etc. in respect of either party.

## **Section 4 Liability of the Port Operator**

### **§19 Period of liability**

The Port Operator shall be liable for the goods from the time at which it takes over the goods until the time of their Delivery.

### **§20 Liability in respect of third parties**

The Port Operator may at any time have the Task performed in full or in part by any third party, but the Port Operator shall remain liable to the Orderer.

### **§21 Liability for loss, damage and delay in respect of goods**

The Port Operator shall be liable for any loss of or damage to the goods and for any delay in Delivery where

- a) it is proved that the event causing such loss, damage or delay occurred in the period during which the Port Operator was in charge of the goods, cf. §19, and
- b) it is proved that such loss, damage or delay was caused by fault or negligence on the part of the Port Operator or any party for which the Port Operator is responsible.

*Subsection 2.* The Port Operator shall not be liable for any loss, damage or delay in respect of the goods caused by strike, lockout, blockade or boycott whether or not the Port Operator is party to such conflict.

### **§22 Liability for any other harm**

The Port Operator shall be liable for any harm other than that specified in §21 if it is proved that such harm was caused by fault or negligence on the part of the Port Operator or any party for which the Port Operator is responsible.

Examples of any other harm are:

- a) harm to the goods other than loss, damage or delay in Delivery
- b) loss, damage or delay in respect of the means of transport
- c) loss, damage or delay in respect of any other goods
- d) damage to the property of the Orderer or any third party
- e) errors in respect of document management, tallies or any other control function.

*Subsection 2.* §21(2) applies by analogy.

### **§23 Delay**

Delay in Delivery shall be said to occur when the Port Operator has not delivered within the expressly agreed time-limit or, failing an agreed time-limit, when the actual time of Delivery exceeds the time which, having regard to the circumstances of the case, it would be reasonable to allow the Port Operator.

*Subsection 2.* The fact that goods have not been delivered within 30 days following the expiry of the expressly agreed time-limit, or, if there is no agreed time-limit, within 60 days from the time when the Port Operator took over the goods, shall be evidence of the loss of the goods.

*Subsection 3.* If the party entitled to take delivery does not receive the goods within the agreed time-limit or, failing an agreed time-limit, in reasonable time after the Port Operator has given the Orderer notice specifying that Delivery may take place, the Port Operator may store the goods for the account and risk of the Orderer.

*Subsection 4.* If in the cases mentioned in subsection 3, the Port Operator is unable to preserve the goods without considerable inconvenience or expense, or the Orderer has not taken the goods into his possession within a reasonable time after having been requested to do so, the Port Operator may sell the goods as specified in §10(3). If no sale can be made or it is clear that the expense incidental to the sale cannot be reimbursed from the selling price, the Port Operator may dispose of the goods.

### **§24 Extra-contractual claims for compensation**

In the event of extra-contractual claims for

compensation the Port Operator and any other party for which it is responsible under § 20 may avail themselves of the provisions of these General Conditions which exclude the liability of the Port Operator or which fix or limit the compensation due.

*Subsection 2.* The total liability incurred by the Port Operator and the parties for which it is responsible shall in no event exceed the limitations of liability set out in §26.

### **§25 Calculation of compensation**

The compensation for any damage to or total or partial loss of goods shall be calculated by reference to the invoiced value at which the goods were last traded before being delivered into the charge of the Port Operator unless it is proved that such value differed from the current value of goods of the same nature and quality at the time and place when and where the Port Operator took over the goods.

*Subsection 2.* If there is no invoiced value as referred to in subsection 1, the value of the goods shall be calculated by reference to the current value of goods of the same nature and quality at the time and place when and where the Port Operator took over the goods.

*Subsection 3.* Compensation in excess of the value under subsections 1 and 2, including compensation for any indirect loss, shall not be granted.

### **§26 Limitation of liability**

Irrespective of §25, the compensation shall not exceed 666.67 SDR per package or other unit of goods, or 2 SDR per kilogram of damaged or lost goods, whichever yields the higher amount.

*Subsection 2.* If containers, trailers, pallets or similar articles of transport are used for consolidating the goods, such article of transport shall, for the purposes of subsection

1, in itself be deemed to constitute a package or other unit of goods. Unless otherwise agreed, the calculation shall not take into account the number of packages consolidated in such article of transport.

*Subsection 3.* Under no circumstances shall the compensation exceed 25,000 SDR per compensation event. If more than one Orderer suffer a loss due to damage occurring on one and the same occasion, the Port Operator's liability to all Orderers concerned shall be limited to 500,000 SDR, to be distributed on a pro rata basis between the Orderers according to the value of the goods, calculated as set out in §25.

*Subsection 4.* If it is proved that a loss has resulted from the delay of the goods, the Port Operator shall pay compensation for such loss not exceeding the amount to which the Port Operator is entitled for the execution of the Task, cf. §4.

*Subsection 5.* If the Port Operator is liable for any other harm as set out in §22, the Port Operator may limit its liability pursuant to subsections 1-3.

*Subsection 6.* The Port Operator's total liability under subsections 1-4 shall not exceed the limitation of liability that would apply to a total loss of the goods covered by such liability, cf. subsections 1-3.

*Subsection 7.* The Port Operator's liability shall not exceed the liability of the Orderer. If the Orderer has limited his liability to any third party, the Port Operator shall, as a matter of course, be entitled to the same limitation of liability to the Orderer and any third party.

### **§27 Intent**

If the Port Operator has intentionally caused a loss, it cannot rely on the provisions in this section which exclude or limit its liability.

## **Section 5 Liability of the Orderer**

### **§28 Liability of the Orderer**

The Orderer shall indemnify the Port Operator against any loss or damage incurred by the Port Operator as a result of the following:

- a) The Orderer has provided incorrect or incomplete information concerning the goods;
- b) The goods were not correctly packed, labelled and declared by the Orderer or any party for which the Orderer is responsible;
- c) The Orderer or any party for which the Orderer is responsible has loaded, unloaded, stowed or secured the goods incorrectly;
- d) The goods have harmful properties of which the Port Operator has not been expressly informed;
- e) The Port Operator is ordered to pay a fine, customs duty, VAT or any other public dues or taxes or to provide security.

*Subsection 2.* If the Port Operator is liable to pay compensation for any damage to the property of a third party, the Orderer shall indemnify the Port Operator for any part of such compensation that the Port Operator would not be obliged to pay if these General Conditions could be asserted against such third party.

## **Section 6 Claims and actions**

### **§29 Duty to give notice**

Where the Orderer intends to hold the Port Operator liable for any damage, loss or delay in respect of the goods or for any other harm, he shall give the Port Operator Written Notice thereof immediately after the Orderer discovers or ought to have discovered the default giving rise to such claim for compensation. If the Orderer does not give such notice without delay, the claim shall lapse.

*Subsection 2.* Irrespective of subsection 1, no compensation for delay in Delivery shall be payable unless the Port Operator receives, within 21 days from Delivery, Written Notice of the Orderer's intention to rely on such delay.

### **§30 Limitation in respect of claims**

Any claim against the Port Operator shall become time-barred after a 10-month period running from the times stipulated in subsection 2.

*Subsection 2.* In the event of damage to or partial loss of goods, the limitation period referred to in subsection 1 shall run from the time of Delivery. In case of delay in Delivery, total loss of goods or any other harm, the limitation period referred to in subsection 1 shall run from the time when such default first becomes apparent.

### **§31 Venue and governing law**

Any legal proceedings arising out of or relating to the contractual relationship between the Port Operator and the Orderer shall be instituted before the court in the jurisdiction where the Port Operator has its registered office.

*Subsection 2.* Any dispute between the Port Operator and the Orderer shall be subject to Danish law.

## **Section 7 Concluding provisions**

### **§32 Commencement**

These General Conditions shall apply to all agreements subject to §2 which are concluded after 31 December 2007 and shall, as from that date, supersede the General Conditions of the Danish Stevedore Association of 11 May 1985 with amendments adopted on 20 May 1994 and the General Conditions of Danske Havnevirksomheder adopted on 15 May 2002.